

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 163.1(1), 203.2 and 206.5(7), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 45, “Pesticides,” and Chapter 90, “State Licensed Warehouses and Warehouse Operators,” Iowa Administrative Code.

The proposed amendments conform the rules to statutory changes made in 2012 Iowa Acts, Senate File 2311, by eliminating the one-year license for pesticide application and the corresponding fee. The amendments also change the timing for providing evidence of replacement insurance and add conditions a warehouse must meet in order to forward stored grain to another warehouse located outside of Iowa.

Any interested persons may make written suggestions or comments on the proposed amendments on or before August 14, 2012. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

These proposed amendments are subject to the Department’s general waiver provisions.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement 2012 Iowa Acts, Senate File 2311, sections 85 to 98 (division XII), sections 99 to 117 (division XIII), sections 118 and 119 (division XIV), sections 120 to 125 (division XV), sections 126 to 129 (division XVI), and sections 130 to 136 (division XVII).

The following amendments are proposed.

ITEM 1. Amend subrule 45.3(6) as follows:

**45.3(6) *Registration renewal grace period.*** The registration period shall be January 1 through December 31 of each year. However, a registrant shall be granted a grace period of three months ending on the ~~first~~ last day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant ~~delivering an application for a registration renewal received on or after the first day of March~~ April of each year. Application for registration renewal shall be made on forms prescribed by the secretary and certified by the registrant.

ITEM 2. Amend rule 21—45.4(206) as follows:

**21—45.4(206) Registration of products.** ~~Two~~ One exact ~~copies~~ copy of the labeling of each proposed product shall be submitted with the application. Also, there shall be submitted an ingredient statement, which shall comply with the provisions of ~~21—45.13(206)~~ 21—45.13(206) herein, the proposed directions for use of the product, and a list of the specific pests, ~~for control of which it is that the product to be sold is intended to control,~~ if such information is not contained in the labeling. Other pertinent information concerning ~~inert~~ ingredients and physical properties of the product shall also be included on request by the secretary.

ITEM 3. Amend paragraphs **45.22(2)“a”** and **“b”** as follows:

*a.* Initial certification. To be initially certified as a commercial, noncommercial or public applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for commercial applicators by passing an examination administered by the department. The examination ~~shall~~ may cover subjects relating to the safe handling, application and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the

effects of pesticides upon groundwater. The examination ~~shall~~ may also cover subjects related to the minimum standards of competency for commercial applicators outlined in 40 CFR 171.4(b) and (c) as revised July 1, 1992.

b. A person who employs noncommercial applicators shall apply for a noncommercial applicator's license; and all noncommercial applicators shall be certified by successfully completing the appropriate examinations for the type of restricted use pesticide applications being made and shall be required to pay the certification fee of ~~\$30 for a one-year certification or~~ \$75 for a three-year certification for each employee certified. Noncommercial applicators shall be subject to the \$25 annual license fee. The provisions of Iowa Code section 206.13 relating to licenses and requirements for their insurance shall not apply to a noncommercial applicator, providing that the noncommercial applicator:

(1) and (2) No change.

ITEM 4. Amend paragraph **45.22(4)“b”** as follows:

b. Each commercial, noncommercial and public applicator's certification shall expire December 31 ~~of the first year for those applicators applying for a one-year certification, and December 31 of the third year for those applicators applying for a~~ of the three-year certification and shall be renewed by the department upon receipt of evidence that the applicator has paid the required certification fee and has completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A commercial, noncommercial or public applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A commercial, noncommercial or public applicator seeking recertification by attending continuing instructional courses shall attend courses approved for each certification category in which a the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification. ~~A 30-day grace period from the date of expiration will be allowed for the renewal of commercial, noncommercial and public applicator's certification.~~

ITEM 5. Amend paragraph **45.22(15)“c”** as follows:

c. A certified handler's certification shall expire December 31 ~~of the first year for those operators applying for a one-year certification and December 31 of the third year for those operators applying for a~~ of the three-year certification and shall be renewed by the secretary upon receipt of evidence that the applicator has passed a written examination similar and equal to that required to obtain initial certification and has paid the required certification fee. ~~A 30-day grace period from the date of expiration will be allowed for the renewal of the certified handler's certification, and a 21-day grace period from the day of initial employment shall be allowed to meet the certification requirements.~~

ITEM 6. Amend subrule 45.22(16) as follows:

**45.22(16) Transition to recertification by instruction.** Recertification may be accomplished by ~~successfully completing~~ successful completion of the required written examination every third year or ~~completing~~ completion of an approved two-hour instructional course each year of the renewal period.

a. Private applicator recertification. ~~A private applicator with a certification expiration date prior to December 31, 1996, may apply for recertification by providing evidence of completion of an approved instructional course during the third year of the renewal period. A private applicator whose certification expires December 31, 1996, or any year thereafter, may apply for recertification by providing evidence of completion of an approved two-hour instructional course for each year during the preceding three-year renewal period. A private applicator failing to meet the required annual two-hour instruction requirement for recertification during the three-year certification renewal period shall apply for recertification by providing evidence of satisfactorily completing an examination. Applications for recertification shall be submitted with a \$15 certification fee. A private applicator whose certification has expired who applies pesticides following the 30-day grace period provided in Iowa Code section 206.5(8) shall have completed the certification instruction or testing requirement and submitted the required certification fee prior to applying a restricted use pesticide.~~

b. Commercial, noncommercial, and public applicator recertification. ~~A commercial, noncommercial or public applicator whose certification expires December 31, 1993, may apply for recertification by providing evidence of completion of an approved instructional course during 1993. A commercial, noncommercial or public applicator whose certification expires December 31, 1994, may apply for recertification by providing evidence of completion of an approved two-hour instructional course in both 1993 and 1994. A commercial, noncommercial or public applicator whose certification expires December 31, 1995, or any year thereafter, may apply for recertification by providing evidence of completion of an approved two-hour instructional course in each of the three calendar years preceding the expiration date. Applications for recertification shall be submitted with the appropriate certification fee.~~

~~A commercial applicator whose certification has expired who applies pesticides following the 30-day grace period provided in Iowa Code section 206.5(8) shall have completed the certification instruction or testing requirement and submitted the required certification fee prior to applying any pesticide.~~

~~c. Programs held prior to April 15, 1994, for pesticide applicator training may be approved for two hours of continuing instruction.~~

ITEM 7. Adopt the following new definition of “United States Warehouse Act” in rule **21—90.2(203C)**:

“*United States Warehouse Act*” means the United States Warehouse Act, 7 U.S.C. Ch. 10.

ITEM 8. Amend subrules 90.10(2) and 90.10(3) as follows:

**90.10(2) Cancellation of insurance.** When the department receives notice from an insurance company that the company ~~has canceled~~ is canceling the insurance of a licensed warehouse, the department ~~shall automatically suspend the warehouse operator license if the department does not receive replacement insurance within 75 days of receipt of the notice of cancellation~~ shall send written notice to the warehouse operator. The notice shall explain the department’s enforcement action that will result from the warehouse operator’s noncompliance. The department shall suspend the warehouse operator license if the department does not receive proof of replacement insurance by the insurance cancellation date. The department shall immediately conduct an inspection of the licensed warehouse immediately at the end of the 75-day period upon suspension of the license. If replacement insurance is not filed within 10 days following suspension, the department shall ~~automatically~~ revoke the warehouse operator license. When the department revokes a license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

**90.10(3) Expiration of insurance.** The department shall send the warehouse operator a reminder letter 30 days prior to the effective date of the expiration of the insurance of a licensed warehouse. The notice shall explain the department’s enforcement action that will result from the warehouse operator’s noncompliance. The department shall automatically suspend the warehouse operator license if replacement insurance is not received by the department ~~within 15 days before~~ by the expiration date. The department shall immediately cause conduct an inspection of the licensed warehouse ~~at the end of the 15-day period upon suspension of the license.~~ If the licensee does not file replacement insurance within 10 days following suspension, the department shall ~~automatically~~ revoke the warehouse operator license. When the department revokes a license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage that the license has been revoked. The department shall further notify each receipt holder and all persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

ITEM 9. Adopt the following **new** subrule 90.10(4):

**90.10(4) *Insufficient insurance.*** The department shall provide written notice to the warehouse operator when the department has evidence that the value of commodities in the warehouse is greater than the limit of liability of the insurance policy. The notice shall explain the department's enforcement action that will result from the warehouse operator's noncompliance. The department shall suspend the warehouse operator license if the department does not receive proof of sufficient insurance coverage within 30 days of the notice. The department shall immediately conduct an inspection of the licensed warehouse upon suspension of the license. If the warehouse operator does not provide proof of sufficient insurance coverage within 10 days of the license suspension, the department shall revoke the license. When the department revokes the license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage that the license has been revoked. The department shall further notify each receipt holder and all persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

ITEM 10. Amend rule 21—90.21(203C), introductory paragraph, as follows:

**21—90.21(203C) Grain stored in another warehouse.** Upon approval of ~~by~~ the bureau, a warehouse operator may store grain in another licensed warehouse ~~located in the state of Iowa~~ in accordance with Iowa Code section 203C.39 as amended by 2012 Iowa Acts, Senate File 2311, section 116.

ITEM 11. Renumber subrules **90.21(1)** to **90.21(6)** as **90.21(2)** to **90.21(7)**.

ITEM 12. Adopt the following **new** subrule 90.21(1):

**90.21(1) *Decision criteria.*** The department shall consider the following in deciding to approve or deny a warehouse operator's request to store grain in another licensed warehouse:

a. The other licensed warehouse is located in Iowa and is either licensed by the department pursuant to Iowa Code chapter 203C or licensed pursuant to the United States Warehouse Act.

b. The other licensed warehouse is located in another state and is licensed pursuant to the United States Warehouse Act.

c. The other licensed warehouse is located in another state and is licensed pursuant to that state's statutes and that state's warehouse license provides all of the following:

(1) Financial requirements and examination programs essentially equivalent to Iowa's;

(2) Insurance coverage equivalent to Iowa's; and

(3) Indemnification, surety bond coverage, letter of credit or other security satisfactory to the department.

ITEM 13. Amend renumbered subrule 90.21(4) as follows:

**90.21(4) *Trust warehouse receipts.*** A warehouse operator who stores grain in another warehouse shall obtain a nonnegotiable warehouse receipt for the grain stored. The receipt shall clearly show the following notation: "Held in Trust for the Depositors of (name of original receiving warehouse)". The warehouse receipt shall be on an official form as specified in 21—90.15(203C)<sub>2</sub>, ~~or on~~ an official United States Department of Agriculture authorized bonded warehouse receipt as provided for in the United States Warehouse Act or on an official form as specified in the regulations of the state in which the warehouse receipt is issued.